

1870-004 Chancery Causes: Zion Flanery & vs. Matthew Cole &
Lee Co.

Hurt, Milbourn, Kirk

1 Plat

CA - Estate Dispute
T - Property

To the Worshipful County Court, of Lee County,
in chancery now sitting:—

Your arators Lion Tlanery and Rees B. Tlanery humbly
complaining sheweth unto your worships, that, some-
time in the year 1855 one John Kirk, departed
this life, but before doing so he made and
published, his last will and testament, devising
among other things, a certain tract or parcel
of land, containing about 130 acres situate about
2½ miles N. of the town of Jonesville, to: Helen M-
Cole, ~~and her~~ four children, to wit. Matthew Cole
Willmington T. Cole, John Cole and Morthat Cole
this devise being made jointly to them. They became
entitled to 1/5th each; the said Helen M. sold and
conveyed, her interest, which was partitioned
and layed off to her; but before, selling the same
she intermarried with one Merideth C. Hunt, and
~~before her marriage she conveyed to her said~~
~~husband and Merideth C. Hunt, her interest in the~~
~~same, and this remainder interest is now that~~
~~said W. H. M. Cole has in this suit; since the~~
said marriage aforesaid, Willmington T. has
departed this life, single and intestate, and
his interest 1/5 of the whole, has descended to
Helen M. the mother, and the other ^{heirs} his brothers
and sisters; the said Helen M. and her husband
Merideth C. Hunt, have sold, but not conveyed
as your arators believe, their interest in the said
Willmington's, share to one John Milbourn
and this portion of this share constitutes the
said Milbourn's, interest in this share. ☉
Your arators have purchased from, Matthew
Cole, his entire, share in the said lands, both
by devise, and descent.

And he ^{has} made his title bond therefor, which is
herewith filed marked X, and prayed to be
considered, herewith, Partition has never
been made between the parties, entitled to
said lands, except the part devised to the said
Helen M., and which now by subsequent pur-
chase, is ~~now~~ in the possession of your orators
^{who} own other lands adjoining, the aforesaid tract
of land - The object of this bill therefore is
to have partition of the said, 130. acre tract of
land made between the parties entitled and
herewith same done in the manner most likely
to promote the interest of all concerned. The
said John Cole & Martha Cole are infants
under 21 years of age.

Your Orators' prayer therefore is that
Matthew Cole, John Cole, Martha Cole
Merideth C. Hunt & Helen M. His wife formerly
Helen M. Cole. ~~Be made parties~~, & John
Millsbourn be made parties defendant
to this bill, and answer the same, that
a guardian ad litem be appointed to
answer ^{for} them, and that a decree be
entered, directing partition in accordance
with the object of this bill: & for all such
other further & general relief they humbly
request.

Wm. A. Pritchard

② Your orators, beg leave to state, that above purchased
by Millsbourn as aforesaid, they understand, was by
agreement between the parties, to be a certain
8 acre piece which adjoins, him, and for which
they understand he holds, the title bond of the
said Helen M., which in the event he produces
they name, your orators are willing for him to have
since it does not affect them, or any other
party concerned, as it not more than his
share thereof: they therefore give their
consent, for him to have said 8 acres
if they are properly informed in reference
thereto.

July 6. 5. 57
J. B. M. C. 4. 76

1111

Genl & Russ B. Plarney

vs Rice in Chy

Mathew Cole et als.

1869. Oct. Bill Filed for Exp and
Dece. 1st & Continued
Nov. - Dece. 1st & Cont.
Dece. 1st & Continued
1870. Jan. Continued
Feb. 1st & Continued for Exp
Feb Term Dece. & Cont.
March - Dece. 1st & Continued
April - Continued
May. Dece. 1st & Continued
June 1st & Continued for
the Dockett.

610.34
A 5.00
J. B. M. C. 5.00
Courts 31.01
S 2.50
T .50
54.35

chd 511

chd 119

To the Worshipful County Court of Lee County, in Chancery
sitting, the answer of John Cole & Martha Cole, by their
guardian ad litem Peter C. Johnston, ~~and answer~~ to a bill
filed in said Court by Zion & Rees B. Flannery against
them & others, respectfully shews:

That saving & reserving now and at all times hereafter
all just & proper exceptions to the Compt's bill ^{he} ~~they~~ answers,
That ^{his wards & orphans} ~~they~~ are owners, as stated in said bill, of ~~an fourth~~ part
jointly of the tract of land in said bill mentioned as sit
forth therein; that this said guardian knows no good
reason why the partition sought by the Compt's should
not be made; and he invokes for his wards the care
and protection of the Court, as they are infants, only
praying your worship, that the share of said land
allotted to the said John & Martha may be laid off
so as to adjoin each other, and that the partition among
all the parties shall be just and equal.

Having thus fully answered said bill, or so much thereof
as it is material should be answered, he prays &c.

P. C. Johnston Guardian
ad litem for John and
Martha Cole.

1870-Feb.

Rees & Zion Flannery to P. C. Johnston Dr

To filing answer as Guardian ad litem for John }
& Martha Cole, at your suit. } \$ 5.00

P. C. Johnston, Guardian ad litem
for John Martha Cole

ads. } answers.

Zion & Keen Flannery

Sworn to ~~before me~~ in
open Court Feb 22/90.
J. B. West Dr

Grim & Reese B. Flanary - pl. ff. } Dr chr
^{against}
 Matthew W. Cole et als wfts }
 v.

This cause came on again this day to be heard upon the papers formerly read in the cause, and the report of Cor Bailey John A. Warner & William S. Martin former comes in this cause, and was argued by counsel; and it appearing to the Court that the said report has been filed more than 30 day before the entrance of this decree, among the papers of the cause, and being unaccepted to the same is hereby confirmed. On consideration whereof the Court is of opinion and doth so adjudge order & decree, that, the plaintiffs Russ B. Flanery, & Ginn Flanery, do take & hold in fee the lot assigned them in said report free from the claims, of all others - said lot is designated on said plat accompanying said report by figures 1, 2, 3, 4, 5, 6, 11, ^{containing 64 acres more or less} that John Cole hold free from the claims of all others the lot assigned him designated on said plat & report by figures 2, 13, 12, 11, 10, 9, 8, 7, 4, 3, 2, ^{containing 64 acres more or less} and that Martha R. Cole hold free from the claims of all others, the lot assigned her designated on the said plat & report by figures, 9, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 189, ^{containing 64 acres more or less} and that John Milbourn hold free from the claims all others, the lot assigned him & designated on the said plat & report by figures 21, 22, 23, 24, 25, 26, 23, 27, 28, 29, 21 and contains 10 acres more or less; and it further adjudged ordered & decreed that Russ B. Flanery & Ginn Flanery, and those claiming under them have free access, to the water, on the lot assigned John W. Cole. and the said report is ordered to be recorded, in the deed book of the county Court of this County -

And it is further adjudged ordered and
 decreed, the plaintiff ~~be~~ ~~pay~~ ~~off~~ from the
 defendants ~~their costs~~, pay the costs of this suit
 in proportion to the share, that each is entitled
 to, that is that the plaintiff recover their costs
 off the defendants, except their due portion accord-
 ing to the interest which they hold -

And no further action being necessary the
 cause is stricken from the docket -

Russell B. Givens

vs. ^{Defendants}

James Dole et al

May 5 1871

5.57
 3.95
 - 9.54

6.84
 5.57
 1.47

chd p 19

Grim & Reese B. Stanley } In Chy.
against
Mathew Cole and others }

This cause came again this day again
to be heard upon the papers formerly
read in the cause - And was argued by
counsel; and it appearing to the Court
that, the former commissions in this cause
have not made partition, of the land in the
bill mentioned, as directed by a former decree
in this cause it is therefore adjudged ordered
and decreed, that Con Bailey, John Worners
& Wm. S. Martin, be and the same are hereby
appointed commissioners in this cause whose
duty it shall be, to go upon the land in
the bill mentioned, and make partition of
the lands in the bill mentioned according to
to a decree rendered in this cause, at
the February term 1870, and report their action with a plat & ~~map~~ ^{partition} of the land.
is continued -

the next term of this court

John & Russ B. Flaney

vs } Deane

Mathew Cole et al

March T. 1870

Grim & Reese B. Flanery - plffs } In Chy.
Against
Mathew Cole et al - --- wfts }

On the motion of the plaintiffs in this Cause D. C. Johnston is appointed guardian ad litem, for John Cole and Martha Cole, infant defendants; and on his motion, leave is granted him, to file the answer of his said wards which is accordingly done.

And thereupon this cause, came on to be heard upon the bill of the plaintiffs the answer of John Cole and Martha Cole infants, by D. C. Johnston, their guardian ad litem; and process having been duly executed on the adult defendants and they still, failing to appear and answer the bill as to them is taken for confessed.

Therefore the Court, doth ~~adjudge~~ order and decree; that Carr Bailly, William Hamblin, and John Warner, be and the same are hereby appointed Commissioners whose duty it shall be to go upon the land ^{make partition thereof equally among the parties entitled thereto} in the bill mentioned, and having due record, to quantity and quality, that they lay-off and assign to the plaintiffs adjoining the lands they now own, the share to which Mathew Cole, is entitled; it being $\frac{1}{5}$ of the entire tract, and also $\frac{1}{4}$ of $\frac{1}{5}$, being the land the said Mathew Cole, is entitled to by descent, from Willington F. Cole deceased. And that one fifth, of the whole tract

and $\frac{1}{4}$ of $\frac{1}{5}$, be assigned to each of the infant defendants, and that these two shares be laid off adjoining each other and it appearing from the statements and allegations of these ^{bills} that Helen M. Hurt is entitled to $\frac{1}{4}$ of $\frac{1}{5}$ - as heir of the said William ^{- son of} F. Colo.; and it appearing to the Court that John Milbourn, has purchased the same from the said Helen M. and having a title bond therefor on file with the papers of this cause - The said Commissioners are directed, to lay off and assign, to the said John Milbourn, the share to which the said Helen M. is ^{so} entitled: And if the same can be done without prejudice to the infants, the Commissioners, are directed to assign the land or so much thereof the said Helen M. is entitled, to John Milbourn, ^{adjoining his land and} now in his possession, ^{or so much thereof as he may be entitled to} under the contract, from the said Helen M. And ~~it further appearing~~ ~~being necessary~~ the cause is continued

Given & Decree 13. February

Wm. J. Beece

Matthew Cole Clerk.

1873.607-8.

Virginia,

At a County Court continued & held for Lee County, February 22, 1870.

Green & Reese B. Flauery

Plaintiffs

against

In Chancery.

Matthew W. Cole et als.

Defendants

Among other things in this Cause, the Court adjudged, ordered, and decreed that Carr Bailey, William Stambler, and John Warner be appointed Commissioners, whose duty it is made to go upon the land in the Bill mentioned and make partition thereof equally among the parties entitled thereto, having due regard to quantity and quality; that they lay off and assign to the Plaintiffs adjoining the land they now own the share to which Matthew Cole is entitled, being $\frac{1}{5}$ of the entire tract, and also $\frac{1}{4}$ of $\frac{1}{5}$ being the land said Cole is entitled to by descent from William F. Cole deceased, and that $\frac{1}{5}$ of the whole tract, and $\frac{1}{4}$ of $\frac{1}{5}$ be assigned to each of the infant defendants, and that these two shares be laid off adjoining each other; and it appearing from the ^{statements and} allegations of this Bill that Helen M. Hurt is entitled to $\frac{1}{4}$ of $\frac{1}{5}$ as heir of the said Wilmington F. Cole; and it appearing to the Court that John Milbourn has purchased the said share from the said Helen M. and having a title bond therefor on file with the papers of this Cause, the said Commissioners are directed to lay off and assign to the said John Milbourn the share to which the said Helen M. is so entitled, and if the same can be done without prejudice to the infants the Commissioners are directed to assign the land or so much thereof as the said Helen M. is entitled to, to John Milbourn adjoining his land and now in his possession or so much thereof as he may be entitled to, under the contract, from the said Helen M. And the Cause is continued.

I copy.

Lease John B. West, D. Clerk,

Yion & Rees B. Flanery

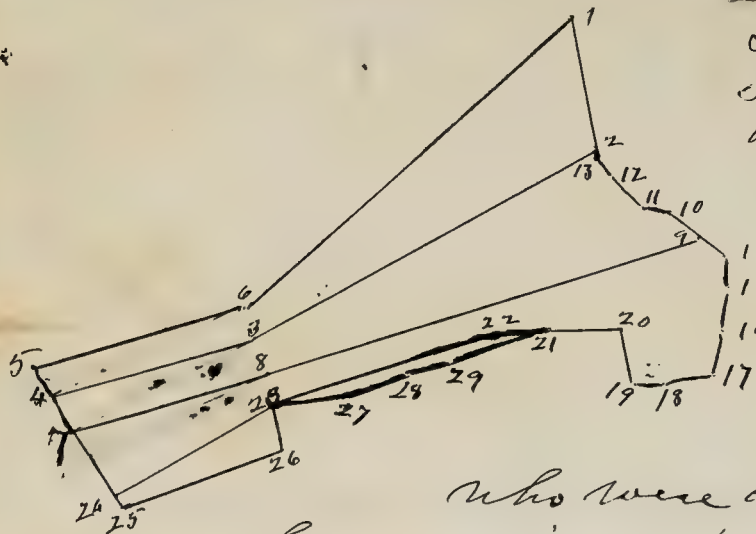
ms. { Copy of part of Decree

Matthew W. Cole et als.

Delivered to Rees B. Flanery

3 copies of this.

H. J. M.



To the Worshipful County Court of
~~Lee County~~
 Zion & Reese B. Flanary
 plaintiffs against Matthew
 W. Cole & Defendants
 In Chancery, Pursuant

to a decree of the
 Worshipful Body
 dated 22. day of February
 1870. The undersigned

who were appointed by said decree
 Commissioners for the purpose have

partitioned the land in the bill mentioned among
 the parties entitled thereto in accordance to said decree
 and beg leave to report: We have laid off and
 assigned to the plaintiffs Zion & Reese B. Flanary, the
 share to which Matthew W. Cole is entitled; it being
 $\frac{1}{5}$ of the entire tract, and also $\frac{1}{4}$ of $\frac{1}{5}$ which is
 bounded as follows to wit: Beginning at a triple
 chestnut a chestnut sprout & a small black oak, by an
 old road on the top of the chestnut ridge corner to
 a 30 acre tract laid off and assigned to Helen M. Hunt
 and decided by her and Mericuth Hunt to William
 Horton which tract now belong to the said plaintiffs,
 which corner is also on a line of the heirs of Thomas Garrett
 thence with said line S 79 W 76 poles to 2 Sourswoods &
 2 chestnuts near the old road thence N 35 W 200 poles to a
 stake in a field thence N 20 W 80 poles to a stake on the
 top of the Poor Valley ridge & along the top of the same
 N 73 E $18\frac{2}{3}$ poles to a stake corner to said 30 acre tract
 & with lines thereof S 20 E 72 poles to a stake in a field thence
 S 49 E 240 poles to the beginning: containing 60 acres more or less
 (See figs. 1, 2, 3, 4, 5, 6, 1)

And we have laid off and assigned to John W. Cole one of the infant defendants $1/5$ of the whole tract and $1/4$ of $1/5$ which is bounded as follows to wit: Beginning at 2 Sownoods & 2 Chornuts near the old road corner to the tract laid off and assigned to the plaintiffs; Thence S 79° W 4 poles to a stake in the old road & with the same S 28° W 10 poles to a stake S 45° W 24 poles to a stake S 12° W 10 poles to a stake on the top of said chornut ridge Thence S 34° W 20 poles to pointers in said road Thence N 23° E 232 poles to a stake in a field Thence N 20° W 84 poles to a stake on the top of the Poor Valley ridge & along the top of the same N 82° E 18° poles to a stake corner to the said tract laid off and assigned to the said plaintiffs & with lines thereof S 20° E 80 poles to a stake in a field; Thence S 35° E 200 poles to the beginning containing 68 acres more or less. (See Fig. 2, 13, 12, 11, 10, 9, 8, 7, 4, 3, 2) And we have laid off and assigned to Martha R. Cole one of the infant defendants $1/5$ of the whole tract and $1/4$ of $1/5$ which is bounded as follows Beginning at pointers on the top of the chornut ridge in the old road, corner to the tract laid off and assigned to John W. Cole Thence along said old road S 34° W 17 poles to a stake Thence S 81° W 14 poles to a stake Thence West 22 poles with an other old road to a stake Thence N 80° W 22 poles leaving the top of said ridge to a stake near a poplar Thence N 12° W 27 poles to a stake Thence N 2° E 12 poles to a stake on the old Bonnett line & with the same N 79° E 29 poles to a stake & a dogwood corner to John Milburn's land & with a line thereof North 33° poles to a stake on the west side of a Gravelly ridge near a Spring branch; Thence N 11° W 23 poles to a stake by the road

Thence N 19° W 120 poles to a Gum by a fence Thence N 27° W 86 poles to a stake on the top of the Poor Valley ridge & with the top of the same N 85° E 31 poles to a stake corner to the tract laid off and assigned to the said John W. Cole & with lines thereof S 20° E 84 poles to a stake in a field Thence S 23° E 232 poles to the beginning containing 64 acres more or less (See Fig. 9, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 7, 8, 9). And we have laid off and assigned to John Milburn $1/4$ of $1/5$ of the entire tract, being the share that the said Helen M. Hunt is entitled to as heir of Wilmington F. Cole deceased which is bounded as follows to wit: Beginning at a stake on the west side of a Gravelly ridge near a Spring branch corner to said Milburn's land & also corner to the tract laid off and assigned to the said Martha R. Cole & with lines of the latter N 11° W 23 poles to a stake by the road Thence N 19° W 120 poles to a Gum by a fence Thence N 27° W 86 poles to a stake on the top of the Poor Valley ridge Thence along the top of the same S 85° W 9 poles to 2 Chornut oaks & a locust on the top of said ridge corner to said Milburn's land & with lines thereof S 20° E 86 poles to a buckeye in a field N 74° E 21 poles to said Gum S 9° E 36 poles to a double dogwood in a hollow S 23° E 35 poles to a white oak by a cane S 14° E 20 poles to a white oak now gone, Thence S 23° E 50 poles to the beginning containing 16 acres more or less. All of which is respectfully submitted to the said Sirs & Recd. of the Court & their successors are by them free access to the water on the tract of said land off and assigned to the said John W. Cole Carr Barclay.

John A. Warner }
William S. Martin } Commissioners

| | | |
|---|--|---------|
| Commissioner's | | |
| Carr & Barleys, Jr. Running & Setting Calcutt & Co. | | \$19.01 |
| John A. Warren Comr. 2 days | | 4.00 |
| William S. Martin Comr. 2 days | | 4.00 |
| Leese Burton Chain Carrier 2 days | | 2.00 |
| Reese B. Flanary " " " | | 2.00 |

Zion & Reese B.
 Flanary Plaintiffs
 against
 Matthew W. Cole et al.
 Defendants
 Commissioners Report
 and Diagram of the
 Partition of the lands
 in the bill mentioned

April 18-1870 Filed
 J.B. West clk.

Recorded in Deed Book
 No 16. Page 48-9
 J.H. Conn. L. clk.

Article of agreement made & entered
into this 21st day of March A.D. 1867, by
and between Helen Hurt of Lee County
Virginia of the first part and John Milbourn
of the said County & State of the other part,
Witnesseth that the said party of the first
part has sold to the said party of the second
part Eight Acres of land off the place on
which said Helen Hurt now resides, ly-
ing on the South Side of the Poor Valley
Ridge and adjoining the land once owned
by William Daugherty and now by said
Milbourn, for the sum of one hundred
& sixty Dollars, and the said Helen Hurt
in consideration of the said premises
hereby acknowledges herself, her heirs
and Administrators and Executors,
to be held and firmly bound unto
said Milbourn in the penal sum
of Three hundred & Twenty Dollars, to
make, or cause to be made a deed with
general warranty to said Milbourn
in a reasonable time for said Eight
acres of land. And when said deed as
aforesaid is made, then this obligation
to be void and of no effect, otherwise
to remain in full force and virtue.
In witness whereof the said party
of the first part has hereunto sub-
scribed her name and affixed her
seal the day and year first before
written.

Test
John D. Sharp

Helen ^{her} X Hurt. Seal
mark

11th
K. 11
to John
Abbott

A.

The Commonwealth of Virginia,

TO THE SHERIFF OF LEE COUNTY—GREETING:

WE COMMAND YOU TO SUMMON

*Matthew Cole, John Cole, Meredith
Hurt and Helen Hurt, his wife, formerly Helen Cole,
(and) John Milbourn, and Matthew Cole.*

to appear before the Justices of our County Court for Lee county, at the Court House, in the Clerk's Office, at Rules to be holden for the said court, on the *first* Monday in *October* next, to answer a bill in chancery, exhibited in our said court, against *them* by *Zion Flanery and Reese B. Flanery*

And have then there this writ. Witness, JOHN B. WEST, Deputy for SYLVESTER E. THOMPSON, Clerk of our said Court, at the Court House, this, *27* day of *September* 186 *9*, in the *94*th year of the Commonwealth.

Lease- John B. West, D. Clerk

from Flanery et al

vs { et al in Chij

Matthew Cole et al.

October Rules 1869.

Executed by delivering
a true copy of the within
to Meredith Hurt, Helen
Hurt, John Milburn,
Martha Cole, & by
leaving a true copy of
within for John Cole, with
his mother.

C. C. Bell D.S.

for W. W. Sage S. L. C.

The Commonwealth of Virginia,

TO THE SHERIFF OF LEE COUNTY—GREETING:

WE COMMAND YOU TO SUMMON *Mathew Cole, John Cole, Meredith Hurt and Helen Hurt, his wife, formerly Helen Cole (and John Cole and Martha R. Cole.*

to appear before the Justices of our County Court for Lee county, at the Court House, in the Clerk's Office, at Rules to be holden for the said court, on the *first* Monday in *October* next, to answer a bill in chancery, exhibited in our said court, against *them* by *Zion Flanery and Reece B. Flanery*

And have then there this writ. Witness, JOHN B. WEST, Deputy for SYLVESTER E. THOMPSON, Clerk of our said Court, at the Court House, this, *27* day of *September* 186*9*, in the *94*—year of the Commonwealt.

Leete - John B. West, D. Clerk

I accept the legal service of the ^{Union} writ
this 24 day of September 1869, ^{at New York} Mathew Cole

from Flanery et al
vs 3 ofa in ch
Mathew Cole et al

October Rules 1869